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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,279	01/09/2002	Derek O' Hagan	PP01573.101	2374
<div>7590      05/03/2007</div> <div>Alisa A Harbin Chiron Corporation Intellectual Property - R440 P O Box 8097 Emeryville, CA 94662-8097</div>				
			EXAMINER AZPURU, CARLOS A	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 05/03/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/914,279	<b>Applicant(s)</b> O' HAGAN ET AL.	
	<b>Examiner</b> Carlos A. Azpuru	<b>Art Unit</b> 1615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8-12, 14-50 and 55-70 is/are pending in the application.
- 4a) Of the above claim(s) 34-49 and 69 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 10, 19-21, 62, 64 and 67 is/are rejected.
- 7) ☒ Claim(s) 4-8, 11, 12, 14-18, 22-33, 50-61, 63, 65, 66 and 68 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>04022007</u> | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

Receipt is acknowledged of the response filed 02/28/2007. An information disclosure statement filed 04/04/2007.

The rejection under 35 USC 112, first paragraph is hereby withdrawn.

With regard to the objection to claim 62 as an improper dependent claim, MPEP 608.01(n) has been reviewed. Although the language is not quite found under the examples set out as acceptable, it is also not found in the unacceptable category. Further, because the claim is clear the objection is withdrawn.

The following rejection is maintained in this action:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 9, 10, 19-21, 62, 64 and 67 are rejected under 35 U.S.C. 102(b) as being anticipated by Hara et al.

Hara et al disclose the combination of cholesterol, cholesteryl oleate (non-ionic surfactants), L alpha-lysophosphatidylcholine (cationic surfactant) and olive oil (see page 14547, Materials and Methods, Materials). Hara et al therefore discloses the formation of microdroplets through the combination of a metabolizable oil and an emulsifying agent. The particle of Hara also contains several other surfactants. Combined with the formed microdroplet is a cytomegalovirus derived plasmid (see page 14547, Materials and Methods, Plasmid). The instant microemulsion is clearly anticipated by Hara et al.

### ***Response to Arguments***

Applicant's arguments filed 02/28/2007 have been fully considered but they are not persuasive.

Applicant argues that none of the components disclosed by Hara et al are non-ionic detergents, and further, that cholesteryl oleate is a lipid. While this is also true of cholesterol, applicant defines the word "detergent" at page 13, line 1 to include emulsion stabilizers. As such, cholesteryl oleate may fall into the category of nonionic detergent since it can be considered an emulsion stabilizer. The rejection under 35 USC 102(b) is therefore maintained.

Claims 4-8, 11, 12, 14-18, 22-33, 50-61, 63, 65, 66 and 68 are objected to as dependent upon a rejected base claim.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

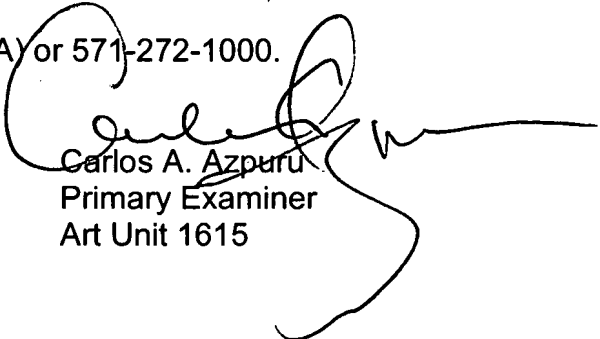
### ***Election/Restrictions***

This application contains claims 34-49 and 69 drawn to an invention nonelected with traverse in Paper No. 09252003. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos A. Azpuru whose telephone number is (571) 272-0588. The examiner can normally be reached on Tu-Fri, 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Carlos A. Azpuru  
Primary Examiner  
Art Unit 1615

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